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Who should receive these food and social protection transfers?

India's food security law provides food to all residents, regardless of citizenship. The PDS is not universal but has been greatly expanded, covering the majority of rural households. An important question arises on whether socio-economic rights, including the right to food, should be provided to all residents and not only to targeted categories of citizens.

ARGUMENTS IN FAVOUR

- As interpreted by the Indian Supreme Court, the right to food is a part of the fundamental right to life which applies to all people, including non-citizen residents
- Universal does not mean uniform, and the law may entail different programmes for different groups
- Current criteria for poverty identification and targeting are defective

ARGUMENTS AGAINST

- Budget and grain resources are limited; therefore the focus should be only on those most in need
- States have duties to legal citizens and not to undocumented immigrants
- Universal application could exclude or weaken the idea of affirmative action for those most vulnerable to hunger and malnutrition
- No justification for feeding the well-fed
- Needs may vary for different population groups



If policy-makers agree that states should provision food as social protection (with or without the backing of a law, and in kind or in cash), the next question which logically arises is: Who in the population resident in the country should fittingly receive this food? In particular, should food provisioning be restricted only to citizens or provided to all residents, regardless of citizenship, and should these rights be universal or targeted at officially identified vulnerable populations? India's Parliament finally voted to secure food to all people and not just citizens, for a non-universal but greatly expanded PDS, covering nationally 75 percent of rural and 50 percent of urban households. In the poorest states, because allocations are based on state poverty levels, this would result in near-universal PDS in their rural regions.

India has a large number of both legal and undocumented migrants, a majority of whom are economic refugees escaping poverty in their native country. No explicit legal framework exists to determine the rights of non-citizen residents to public services. Should socio-economic rights (which involve budgetary implications) be restricted to legal citizens?

The constitutional position in India on this is debatable. Some legal scholars suggest that fundamental rights under the Constitution extend to all residents, but other rights such as socio-economic rights apply only to citizens. They are right that in a strictly textual sense, the right to food is not explicitly listed as a fundamental right. But as we have seen earlier, the right to life has been interpreted by the Indian Supreme Court to include the right to food (and other rights essential for a life with dignity). If this is accepted, then the right to food also would extend to non-citizen residents because it is a fundamental right. The ICESCR also speaks of ensuring the right to food of "everyone" within or under jurisdiction of the state, and explicitly bars discrimination on the basis of nationality, among other grounds.¹

If we scan the debates in official bodies and Parliament, we find that no serious case has been officially made to restrict this right only to citizens. The language of the law refers to "people", "children", and "women", without the caveat anywhere of the requirement of citizenship, thereby implicitly accepting its application also to non-citizens and unregistered migrants.

But during implementation, problems of exclusion of people of contested citizenship remain, especially for some immigrants, homeless populations, forest dwellers, and those residing in remote areas. These vulnerable populations often lack any kind of citizen documentation, which is frequently sought by officials even if the law does not require them to do so.

There are also practical arguments, on the basis of large and uncertain budgetary burdens, against including non-citizens. These arguments apply more generally to the second debate in this chapter on the question of whether these rights should be applied universally or targeted. Experts argue that budgets and grain are both finite, and if they are provided to all, to the wealthy and poor alike, it will result in high wastage of both public money and food. Thus in the end the poor will get a much smaller share of public resources and subsidized food. Countries in North Africa which have experimented with universal approaches have found that this vastly increases the cost of the programmes.

1 Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

A powerful argument against universalization is made by critics on grounds of equity. Universal social security programmes have been criticized for lacking an element of affirmative action. Vulnerability and denials of food vary hugely between households, and many have asked if “universal” also means “uniform” entitlements. They question the justification of giving a rich landlord or wealthy businessperson subsidized grains in the same quantity and price as a destitute landless widow or homeless disabled beggar. But universal rights need not be uniform rights, and the law may recognize that whereas everyone has a right, the needs as well as the barriers to that right may vary for different segments of the population, and therefore it may well entail different programmes for diverse groups within the framework of a universal right.

Supporters of a universal PDS also argue that the state has a moral duty to provide basic public goods to all citizens, or residents within a jurisdiction; therefore, considerations of fiscal discipline and efficiency are untenable in this



framework. Building on the idea that each person has a fundamental human right to life with dignity, it is argued that a constitutional democracy must guarantee a set of basic rights – or what are sometimes described as basic public goods – to all people under the constitutional and statutory scaffolding of universal socio-economic human rights, including the rights to food, health care, education, and social security. Some leading economists estimate that a full contingent of these universal rights would cost an additional 10 percent of GDP. India's tax to GDP ratio remains low at about 10 percent;² even if it were enhanced to 20 percent, it would be still less than that of the United States of America.

This ethical argument for universal entitlements is bolstered by the dismal empirical experience of targeting, which has been found to exclude delivery to those most in need. Official studies themselves admit that if you are poor, there is often a greater chance that you will not be included in official BPL lists. The criteria for poverty identification are often defective and opaque, leaving great scope for official discretion at the lowest levels and for high rent-seeking. The poorest households also are unable to understand and negotiate the official processes for identification, all of which lead to grave exclusion errors and skewed targeting away from the poor. Due to the various benefits of the poverty reduction programmes, many non-poor try to get selected as officially poor by manipulation or deceit (e.g. a wealthy farmer who manipulates land records to prove that his adult sons are landless).

Other practical arguments are that a universal PDS has been found to perform better than a targeted PDS. States with a universal PDS show the best performance, followed by states with near universalization, in turn followed by states with an expanded PDS. The performances of the states with targeted PDS are the worst.

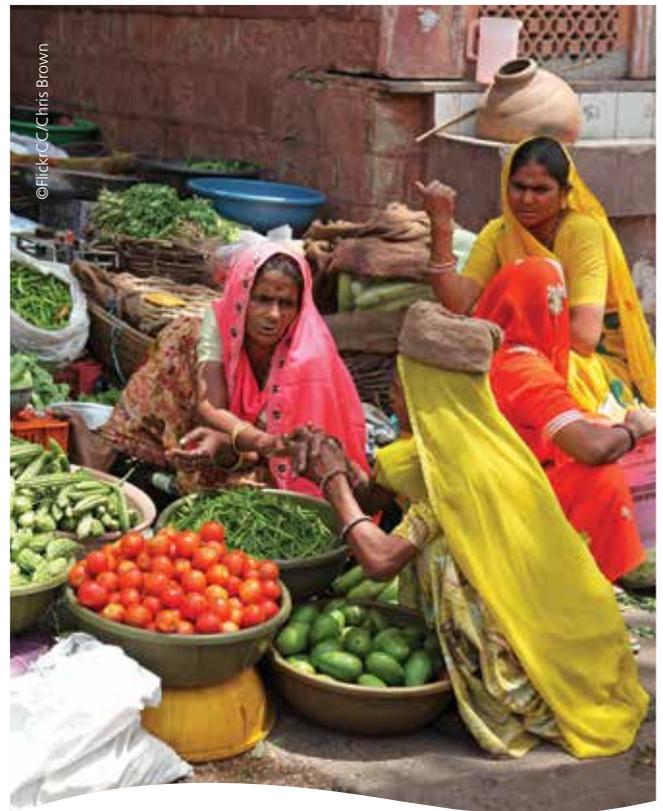
Further, targeting does not consider the dynamic nature of poverty. Instead, it assumes that a fixed pool of disadvantaged people exist at any given point in time, thereby leading to the false belief that disadvantaged people can be identified accurately and affordably. This is a compelling argument

2 Available at <http://indiabudget.nic.in/ub2014-15/frbm/frbm3.pdf>

against targeting, especially in the most vulnerable countries: those that are exposed to frequent shocks and have very limited capacities. Proponents of universal schemes also argue that "self-selection", where people from higher socio-economic strata choose not to avail themselves of food security schemes because of the lower quality of foodstuff available, would reduce actual offtake and expenditure on such schemes. But at the same time it can open the door to other diversions and leakages, like "ghost" beneficiaries and diversions to feed livestock.

It is important to note that the debate of targeting applied only in the context of the PDS. India went in finally not only for a greatly expanded but non-universal system, but also a system that had two grades, with greater entitlements for those considered most vulnerable. It therefore tried to incorporate affirmative action for the poorest within a greatly expanded but non-universal set of entitlements. But it left to the states the crucial questions of how to identify those to be covered and excluded by both the expanded and "poorest of the poor" entitlements.

It is significant that there were no serious debates on the targeting of other NFSA entitlements like preschool and pregnant mother feeding, school meals, and maternity benefits. They are virtually universal for public schools and child centres, for all those who seek it. In other countries, universal programmes have worked in practice as regressive targeting, with remote rural areas being left out in practice.



In India as well, there is in practice low coverage of these universal programmes in rural settlements of disadvantaged-caste and tribal communities, and also urban slums. In addition, other problems of de facto targeting remain, such as out-of-school children who cannot access school meals. This will be discussed in a later chapter.

This set of briefs are derived from the publication: FAO. 2015. *State food provisioning as social protection – Debating India’s national food security law*, by Harsh Mander. Rome, FAO.

The Food and Agriculture Organization of the United Nations (FAO) would like to thank the UK Department for International Development (DFID) and the Centre for Equity Studies (New Delhi, India) for the financial and technical support.

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